

FIRST REGULAR SESSION

# SENATE BILL NO. 555

93RD GENERAL ASSEMBLY

---

INTRODUCED BY SENATOR SHIELDS.

Read 1st time March 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1954S.01I

---

## AN ACT

To amend chapter 192, RSMo, by adding thereto ten new sections relating to the personal care assistance program, with penalty provisions.

---

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 192, RSMo, is amended by adding thereto ten new sections, to be known as sections 192.1000, 192.1003, 192.1006, 192.1009, 192.1012, 192.1015, 192.1018, 192.1021, 192.1024, 192.1027, to read as follows:

**192.1000. As used in sections 192.1000 to 192.1027, the following terms mean:**

(1) "Consumer", a physically disabled person determined by the department to be eligible to receive personal care assistance services. "Consumer" does not include any individual with a legal limitation of his or her ability to make decisions, including the appointment of a guardian or conservator, or the effectiveness of a power of attorney that authorizes another person to act as the agent or on behalf of the individual for any of the duties required by the consumer-directed program;

(2) "Consumer-directed", hiring, training, supervising, and directing of the personal care attendant by the physically disabled person;

(3) "Department", the department of health and senior services;

(4) "Live independently", to reside and perform routine tasks in a noninstitutional or unsupervised residential setting;

(5) "Personal care assistance services", those routine tasks provided to meet the unmet service needs required by a physically disabled person to enable him or her to live independently;

(6) "Personal care attendant", a person, other than the consumer's spouse, who performs personal care assistance services for a physically disabled person;

(7) "Physically disabled", loss of, or loss of use of, all or part of the neurological, muscular, or skeletal functions of the body to the extent that a

person requires the assistance of another person to accomplish routine tasks;

(8) "Routine tasks":

(a) Bowel and bladder elimination;

(b) Dressing and undressing;

(c) Moving into and out of bed;

(d) Preparation and consumption of food and drink;

(e) Bathing and grooming;

(f) Use of prostheses, aids, equipment, and other similar devices; or

(g) Ambulation and other functions of daily living;

(9) "Unmet needs", those routine tasks which are allowable by Medicaid but which cannot reasonably be met by the members of the consumer's household or other current support systems;

(10) "Vendor", any person, firm, or corporation having a written agreement with the department to provide services including monitoring and oversight of the personal care attendant, orientation, and training of the consumer, and fiscal conduit services necessary for delivery of personal care assistance services to physically disabled persons.

192.1003. 1. Subject to appropriations, the department shall provide financial assistance for consumer-directed personal care assistance services through eligible vendors to each person the department determines is eligible to participate under guidelines established by the department and who:

(1) Is capable of living independently with personal care assistance services;

(2) Is physically disabled;

(3) Is eighteen years of age;

(4) Is able to direct his or her own care;

(5) Is able to document proof of Medicaid eligibility under Title XIX of the Social Security Act under federal and state laws and regulations;

(6) Requires at least a nursing home level of care under regulations established by the department; and

(7) Participates in an assessment or evaluation, or both by the department.

2. Upon certification of the employment of a personal care attendant chosen by the consumer in accordance with sections 192.1000 to 192.1027, the vendor shall perform the payroll and fringe benefit accounting functions for the consumer. The vendor shall be responsible for filing claims with the Missouri Medicaid program. Statutorily required fringe benefit costs shall be paid from the personal care assistant appropriation. The department shall establish the statewide rate for personal care attendant services. For purposes of this section, the personal care attendant is considered the employee of the consumer only for the period of

time subsidized by personal care assistant funds. Nothing in this section shall be construed such that the attendant is the employee of the vendor, the department, or the state of Missouri.

**192.1006. 1. The department shall initiate the determination of an applicant's eligibility for personal care assistance services as follows:**

**(1) For all persons who had been receiving personal care assistance services on the effective date of this act, the department shall initiate re-verification of the consumer's eligibility for personal care assistance services not later than one year following the effective date of this act. For all such re-verifications in which the person is found to remain eligible, the department shall also review the person's personal care assistance authorized by the department to determine if it shall be maintained, adjusted, or eliminated according to the person's current situation;**

**(2) For all applicants for personal care assistance services who apply for such services on or after the effective date of this act, the department shall initiate the determination of an applicant's eligibility for personal care assistance services within thirty days of receipt of a completed application;**

**(3) After the assessment described in subdivisions (1) and (2) of this subsection, the department shall re-verify the applicant's eligibility for personal care assistance services at least every twelve months;**

**(4) All such determinations made under subdivisions (1), (2), and (3) of this subsection shall be made using the same common assessment tool used by the department for assessment of other disabled and aged adults;**

**(5) All such determinations made under subdivisions (1), (2), and (3) shall be made in strict compliance with the provisions of subsection 2 of section 192.1009.**

**2. The applicant shall be notified of the initial determination of the department on his or her eligibility for personal care assistance services within ten days of determination.**

**3. Upon a determination of eligibility, the department shall develop a personal care assistance services plan which shall include, but is not limited to, the following:**

**(1) The maximum number of units of fifteen minute increments of personal care assistance services to be provided; and**

**(2) Dates of initiation of, and re-evaluations of the personal care assistance services provided.**

**4. Upon a determination of eligibility and completion of a personal care assistance services plan, the consumer shall choose a vendor of personal care assistance services from a list of eligible vendors maintained by the**

department. The vendor shall be responsible for maintaining a list of eligible personal care attendants. The personal care assistance services plan shall be signed by the consumer and a representative of the department. Copies of the plan shall be provided to the consumer, the vendor, and the department.

5. The need of the consumer shall be re-evaluated annually by the department, and the amount of assistance authorized by the department shall be maintained, adjusted, or eliminated accordingly.

192.1009. 1. Consumers receiving personal care assistance services shall be responsible for the supervision of their personal care attendant, verification of wages to be paid to the personal care attendant, and preparation and submission of time sheets, signed by both the consumer and personal care attendant, to the vendor on a biweekly basis. The vendor shall accumulate time sheets and certify their accuracy, and be responsible for the Medicaid reimbursement process, including the filing of claims, and reporting data to the department as required by rule. The vendor shall mail the individual payment directly to the personal care attendant on behalf of the consumer. In addition, the consumer shall promptly notify the department of any changes in circumstances affecting the personal care assistance services plan or in the consumer's place of residence. The vendor shall monitor the performance of the personal care assistance services plan. The consumer shall report any problems resulting from the quality of service rendered by the personal care attendant to the vendor. If the consumer is unable to resolve any problems resulting from the quality of service rendered by the personal care attendant with the vendor, the consumer shall report the situation to the department.

2. No state or federal financial assistance shall be authorized or expended to pay for services provided to a consumer under sections 192.1000 to 192.1027, if the primary benefit of the services is to the household unit, or is a household task that the members of the household of the consumer may reasonably be expected to share or do for one another when they live in the same household, unless such service is above and beyond typical activities household members may reasonably provide for another household member without a disability.

3. No state or federal financial assistance shall be authorized or expended to pay for personal care assistance services provided by a personal care attendant who is listed on any of the background check lists in the family care safety registry under sections 210.900 to 210.937, RSMo, unless a good cause waiver is first obtained from the department in accordance with section 660.317, RSMo.

192.1012. 1. When any adult day care worker; chiropractor; Christian Science practitioner; coroner; dentist; embalmer; employee of the departments of

social services, mental health, or health and senior services; employee of a local area agency on aging or an organized area agency on aging program; funeral director; home health agency or home health agency employee; hospital and clinic personnel engaged in examination, care, or treatment of persons; in-home services owner, provider, operator, or employee; law enforcement officer; long-term care facility administrator or employee; medical examiner; medical resident or intern; mental health professional; minister; nurse; nurse practitioner; optometrist; other health practitioner; peace officer; pharmacist; physical therapist; physician; physician's assistant; podiatrist; probation or parole officer; psychologist; vendor as defined in section 192.1000; personal care attendant; or social worker has reasonable cause to believe that a consumer has been abused or neglected as defined in section 660.250, RSMo, as a result of the delivery of or failure to deliver personal care assistance services, he or she shall immediately report or cause a report to be made to the department. If the report is made by a physician of the consumer, the department shall maintain contact with the physician regarding the progress of the investigation.

2. When a report of deteriorating physical condition resulting in possible abuse or neglect of a consumer is received by the department, the department's case manager and the department nurse shall be notified. The case manager shall investigate and immediately report the results of the investigation to the department nurse.

3. If requested, local area agencies on aging shall provide volunteer training to those persons listed in subsection 1 of this section regarding the detection and report of abuse and neglect under this section.

4. Any person required in subsection 1 of this section to report or cause a report to be made to the department who fails to do so within a reasonable time after the act of abuse or neglect is guilty of a class A misdemeanor.

5. The report shall contain the names and addresses of the vendor, the personal care attendant, and the consumer, and information regarding the nature of the abuse or neglect, the name of the complainant, and any other information which might be helpful in an investigation.

6. In addition to those persons required to report under subsection 1 of this section, any other person having reasonable cause to believe that a consumer has been abused or neglected by a personal care attendant may report such information to the department.

7. If the investigation indicates possible abuse or neglect of a consumer, the investigator shall refer the complaint together with his or her report to the department director or his or her designee for appropriate action. If, during the

investigation or at its completion, the department has reasonable cause to believe that immediate action is necessary to protect the consumer from abuse or neglect, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the consumer in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of the consumer, for a period not to exceed thirty days.

8. Reports shall be confidential, as provided under section 660.320, RSMo.

9. Anyone, except any person who has abused or neglected a consumer, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

10. Within five working days after a report required to be made under this section is received, the person making the report shall be notified of its receipt and of the initiation of the investigation.

11. No person who directs or exercises any authority as a vendor, and no personal care attendant, shall harass, dismiss or retaliate against a consumer because he or any member of his or her family has made a report of any violation or suspected violation of laws, standards or regulations applying to the vendor or personal care attendant which he has reasonable cause to believe has been committed or has occurred.

12. The department shall place on the employee disqualification list pursuant to section 660.315, RSMo, the names of any persons who have been finally determined by the department, to have recklessly, knowingly or purposely abused or neglected a consumer while employed by a vendor, or employed by a consumer as a personal care attendant.

13. The department shall provide the list maintained pursuant to section 660.315, RSMo, to vendors as defined in section 192.1000.

14. Any person, corporation or association who received the employee disqualification list under subsection 13 of this section, or any person responsible for providing health care service, who declines to employ or terminates a person whose name is listed in this section shall be immune from suit by that person or anyone else acting for or in behalf of that person for the failure to employ or for the termination of the person whose name is listed on the employee disqualification list.

192.1015. 1. Any person having reasonable cause to believe that a misappropriation of a consumer's property or funds, or the falsification of any documents verifying personal care assistance services delivery to the consumer has occurred, may report such information to the department.

2. For each report the department shall attempt to obtain the name and address of the vendor, the personal care attendant, the personal care assistance services consumer, information regarding the nature of the misappropriation or falsification, the name of the complainant, and any other information which might be helpful in an investigation.

3. Any personal care assistance services vendor, or personal care attendant who puts to his or her own use or the use of the personal care assistance services vendor or otherwise diverts from the personal care assistance services consumer's use any personal property or funds of the consumer, or falsifies any documents for service delivery, is guilty of a class A misdemeanor.

4. Upon receipt of a report, the department shall immediately initiate an investigation and report information gained from such investigation to appropriate law enforcement authorities.

5. If the investigation indicates probable misappropriation of property or funds, or falsification of any documents for service delivery of a personal care assistance services consumer, the investigator shall refer the complaint together with the investigator's report to the department director or the director's designee for appropriate action.

6. Reports shall be confidential, as provided under section 660.320, RSMo.

7. Anyone, except any person participating in or benefitting from the misappropriation of funds, who makes a report under this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

8. Within five working days after a report required to be made under this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

9. No person who directs or exercises any authority in a personal care assistance services vendor agency shall harass, dismiss or retaliate against a personal care assistance services consumer or a personal care attendant because he or she or any member of his or her family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the personal care assistance services vendor or any personal care attendant which he or she has

reasonable cause to believe has been committed or has occurred.

10. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any personal care attendants who are or have been employed by a personal care assistance services consumer, and the names of any persons who are or have been employed by a vendor as defined in subdivision (10) of section 192.1000, and who have been finally determined by the department under section 660.315, RSMo, to have misappropriated any property or funds, or falsified any documents for service delivery to a personal care assistance services consumer and who came to be known to the consumer, directly, or indirectly by virtue of the consumers participation in the personal care assistance services program.

192.1018. 1. In order to qualify for an agreement with the department, the vendor shall have a philosophy that promotes the consumer's ability to live independently in the most integrated setting or maximum community inclusion of persons with physical disabilities, and shall demonstrate the ability to provide, directly or through contract, the following services:

(1) Orientation of consumers concerning the responsibilities of being an employer, supervision of personal care attendants including the preparation and verification of time sheets;

(2) Training to consumers in the recruitment and training of personal care attendants;

(3) Maintenance of a list of persons eligible to be a personal care attendant;

(4) Processing of inquiries and problems received from consumers and personal care attendants;

(5) Ensuring the personal care attendants are registered on the family care safety registry as provided in sections 210.900 to 210.937, RSMo; and

(6) The capacity to provide fiscal conduit services.

2. In order to maintain its agreement with the department, a vendor shall comply with the provisions of subsection 1 of this section and shall:

(1) Demonstrate sound fiscal management as evidenced on accurate quarterly financial reports and annual audits submitted to the department; and

(2) Demonstrate a positive impact on consumer outcomes regarding the provision of personal care assistance services as evidenced on accurate quarterly and annual service reports submitted to the department;

(3) Implement a quality assurance and supervision process that ensures program compliance and accuracy of records; and

(4) Comply with all provisions of sections 192.1000 to 192.1027, and the regulations promulgated thereunder.



192.1021. 1. Applicants for personal care assistance services and consumers receiving such services are entitled to a hearing with the department of health and senior services if eligibility for personal care assistance services is denied, if the type or amount of services is set at a level less than the consumer believes is necessary, if disputes arise after preparation of the personal care assistance services plan concerning the provision of such services, or if services are discontinued as provided in section 192.1024.

2. Requests for a hearing shall be made to the department of social services in writing in the form prescribed by the department within ninety days after the mailing or delivery of the written decision of the department. The procedures for such requests and for the hearings shall be as set forth in section 208.080, RSMo.

192.1024. A consumer's personal care assistance services may be discontinued under circumstances such as the following:

(1) The department learns of circumstances that require closure of a consumer's case, including one or more of the following: death, admission into a long term care facility, no longer needing service, or inability of the consumer to consumer-direct personal care assistance service;

(2) The consumer has falsified records or committed fraud;

(3) The consumer is noncompliant with the plan of care. Noncompliance requires persistent actions by the consumer which negate the services provided in the plan of care;

(4) The consumer or member of the consumer's household threatens or abuses the personal care attendant or vendor to the point where their welfare is in jeopardy and corrective action has failed;

(5) The maintenance needs of a consumer are unable to continue to be met because the plan of care hours exceed availability; and

(6) The personal care attendant is not providing services as set forth in the personal care assistance services plan and attempts to remedy the situation have been unsuccessful.

192.1027. The department may promulgate rules and regulations to implement the provisions of sections 192.1000 to 192.1027. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and

any rule proposed or adopted after August 28, 2005, shall be invalid and void.

**T**

Unofficial

Bill

Copy